

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY DILLINGHAM,

Plaintiff,

vs.

F. GARCIA, et al.,

Defendants.

1:20-cv-01210-NONE-GSA-PC

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDERS
(ECF Nos. 2, 6.)**

**OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS**

On August 7, 2020, and February 1, 2021, the court issued order requiring Plaintiff to complete the court's form, indicating whether he consents to or declines Magistrate Judge jurisdiction and return the form to the court within thirty days. (ECF Nos. 2, 6.) The thirty-day time periods have now expired and Plaintiff has not returned the court's consent/decline form.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

1 “‘The public’s interest in expeditious resolution of litigation always favors dismissal,’”
2 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
3 action has been pending since August 2020. Plaintiff’s failure to respond to the court’s orders
4 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court cannot
5 continue to expend its scarce resources assisting a litigant who will not respond to court orders.
6 Thus, both the first and second factors weigh in favor of dismissal.

7 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
8 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
9 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
10 is Plaintiff’s failure to submit the court’s consent/decline form that is causing delay. Therefore,
11 the third factor weighs in favor of dismissal.

12 As for the availability of lesser sanctions, at this stage in the proceedings there is little
13 available to the court which would constitute a satisfactory lesser sanction while protecting the
14 court from further unnecessary expenditure of its scarce resources. Given that Plaintiff is
15 proceeding *in forma pauperis* in this action, the court finds monetary sanctions of little use, and
16 given the early stage of these proceedings, the preclusion of evidence or witnesses is not
17 available. However, inasmuch as the dismissal being considered in this case is without prejudice,
18 the court is stopping short of issuing the harshest possible sanction of dismissal with prejudice.

19 Finally, because public policy favors disposition on the merits, this factor will always
20 weigh against dismissal. Id. at 643.

21 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based
22 on Plaintiff’s failure to obey the court’s orders issued on August 27, 2020, and February 1, 2021.
23 These findings and recommendations are submitted to the United States District Judge assigned
24 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days
25 after being served with these findings and recommendations, Plaintiff may file written objections
26 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings
27 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
28 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39

(9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). In the alternative, instead of filing objections, Plaintiff may submit the court's consent/decline form, completed and signed, which will resolve this matter.

IT IS SO ORDERED.

Dated: April 8, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE